IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4778 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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DIVAKAR MADHUSADAN GAVASKAR & 1 - Applicant(s)
Versus
B.S.PRAJAPATI, FOOD INSPECTOR OR HIS SUCCESSOR IN OFFICE & 1 - Respondent(s)

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Appearance :
MR TANVISH U BHATT for Applicant(s) : 1 - 2.
None for Respondent(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/11/2006

ORAL JUDGMENT

1.0 By way of this application, the applicants have prayed to quash and set aside the Criminal Case No.315 of 2006 filed before the Court of the learned Judicial Magistrate, First Class, Amreli.

2.0 The brief facts of the case are that the present applicant No.1 who is a retired Company Executive and applicant No.2 who is an Advocate

and a Solicitor by profession, were appointed as non-executive director of Abbott Healthcare Pvt. Ltd. Both the applicants resigned as Director of the said Company with effect from 02.05.2003. The case of the applicants is that, pursuant to their resignation dated 02.05.2003 i.e. after a period of about two years, respondent No.1 filed the impugned complaint on behalf of the State of Gujarat on the ground that the sample of the Ensure(chocolate) flavour 400 gms. tin was found to be adulterated under Rule 47, misbranded under Rule 42(zzz) and the same was in contravention of the Prevention of Food Adulteration Rules, 1955. In the said complaint present applicants were shown as opponent Nos. 3 and 4. Being aggrieved with the aforesaid action of respondent No.1, the applicants have approached this Court by way of filing the present application.

3.0 Learned Advocate for the applicants has restricted his arguments only to the aspect that there is no allegation in the whole complaint to the effect that the applicants were involved in

the day-to-day administration of the Company. Learned Advocate has, therefore, submitted that since the applicants were not involved in the day-to-day administration of the management of the company and that the applicants had, already, resigned from the company prior to the filing of the impugned complaint by respondent No.1, the impugned complaint deserves to be quashed and set aside.

3.1 In support of his case learned Advocate for the applicants has placed reliance on a decision of the Apex Court in the case of ***"S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla & anr."*** reported in (2005) 8 SCC 89 wherein it has been held that it is necessary to aver in the complaint filed in respect thereof that at the time when the offence was committed, the person accused was in-charge of and responsible for the conduct of business of the Company. Learned Advocate has relied upon the observations made in Paras 19 (a) & (b) of the said decision, which reads as under;

> "19. In view of the above discussion, our answers to the questions posed in the reference are as under;
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> (a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.
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> (b) The answer to the question posed in sub-para (b) has to be in the negative. Merely being a director of a company is not sufficient to make the person liable under Section 141 of the Act. A director in a Company cannot be deemed to be in charge of and responsible to the company for the conduct of its business. The requirement of Section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there is no deemed liability of a director in such cases."

4.0 Learned Advocate for the respondents have contended that since the applicants were the Directors of the company in question, they were responsible for the conduct of business of the company and, therefore, no interference is called for by this Court.

5.0 Heard learned Advocate for the parties

and perused the documents placed on record. Having gone through the impugned complaint, it appears that nowhere an averment to the effect that the applicants were in-charge of or that they were responsible for the conduct of the business of the Company appears to have been made. There is nothing in the complaint to show that the act committed or the conduct of the applicants was such that an inference could be drawn that they could be held vicariously liable. No overt act or act of commission or omission has been alleged against the applicants in the complaint.

5.1 Under the provisions of the relevant Act what is required is that the persons who are sought to be made criminally liable should be, at the time the offence was committed, were in charge of and responsible to the company for the conduct of the business of the company. Every person connected with the company shall not fall within the ambit of the provision. It is only those persons who are in charge of and responsible for the conduct of business of the company at the time

of the commission of the offence, shall be liable for criminal action. Learned Advocate for the respondents are not in a position to show from the complaint that the applicants were in charge of and responsible for the day-to-day affairs of the management of the Company.

5.2 In the case on hand, since it is not borne out from the complaint that the applicants were in charge of and responsible to the company for the conduct of the business of the company, they could not be held criminally liable. On the contrary, from the record it clearly transpires that the applicants had already resigned from the said Company for about two years before the filing of the impugned complaint. The liability arises from being in charge of and responsible for the conduct of the business of the Company at the relevant time when the offence was committed and not on the basis of merely holding a designation of Office in a company. Therefore, in view of the principle laid down in ***"S.M.S. Pharmaceuticals Ltd. Case (supra)"***, I am of the opinion that this

is a fit case where this Court should exercise powers under Section 482 of the Code of Criminal Procedure in favour of the applicants.

6.0 In the result, the application is allowed. The complaint being Criminal Case No.315 of 2006 pending before the Court of the learned Judicial Magistrate, First Class, Amreli is quashed and set aside only qua the present applicants only. It is made clear that proceedings qua other accused persons shall proceed in accordance with law. Rule is made absolute.

(K. S. Jhaveri, J.)

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